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## State v. Swain Appellant's Brief Dckt. 42770

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COPY

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	NO. 42770
Plaintiff-Respondent,	)	
	)	WASHINGTON COUNTY
v.	)	NO. CR 2013-4335
	)	
TAYLOR SWAIN,	)	APPELLANT'S BRIEF
	)	
Defendant-Appellant.	)	

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BRIEF OF APPELLANT

APPEAL FROM THE DISTRICT COURT OF THE THIRD JUDICIAL  
DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE  
COUNTY OF WASHINGTON

HONORABLE SUSAN E. WIEBE  
District Judge

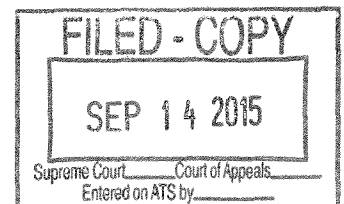
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## STATEMENT OF THE CASE

### Nature of the Case

Taylor Swain entered a conditional plea to one count of possession of methamphetamine, preserving his right to appeal the district court's order denying his Motion to Suppress. Mindful of the United States Supreme Court decision in *Virginia v. Moore*, 553 U.S. 164 (2008) and the Idaho Supreme Court's decision in *State v. Green*, No. 41736, 2015 WL 3826636 (Idaho June 22, 2015), Mr. Swain nevertheless asserts that his Fourth Amendment rights were violated when Officer Samson unlawfully arrested him for driving without privileges and, therefore, any evidence found as a result of the arrest must be suppressed.

### Statement of the Facts and Course of Proceedings

Officer Samson saw a car make a turn without using a turn signal, and he signaled for the car the pull over. (Tr. 2/18/14, p.8, L.23 – p.9, L.17.) When Officer Samson approached the driver of the car, he recognized Mr. Swain from prior contacts. (Tr. 2/18/14, p.9, Ls.21-24.) Neither Mr. Swain nor his passenger had a driver's license or other identification. (Tr. 2/18/14, p.11, L.6 – p.12, L.11.) Officer Samson arrested Mr. Swain and told him that he was arresting him in order to get his photo, fingerprints, and other identifying information. (Tr. 2/18/14, p.13, Ls.8-16.) While arresting Mr. Swain, Officer Samson searched Mr. Swain and found suspected methamphetamine. (Tr. 2/18/14, p.23, Ls.12-17.) Mr. Swain was charged with possession of methamphetamine. (R., p.32.) He filed a Motion to Suppress, wherein he argued that Idaho Code section 49-1407 only permits an officer to arrest a person for driving without privileges if certain conditions apply and, because those conditions were not present, his arrest was a violation of the statute. (R., pp.47-51.)

In its order denying the Motion to Suppress, the district court analyzed the Courts of Appeals' holding in *State v. Foldesi*, 131 Idaho 778, 781-82 (Ct. App. 1998). In *Foldesi*, police arrested the driver of a vehicle because her license was expired and found methamphetamine when they searched the vehicle incident to arrest. *Id.* at 779. The Court of Appeals granted the defendant's motion to suppress and held that Idaho Code section 49-1407 only permitted an officer to arrest a person for driving without privileges if a person does not furnish satisfactory evidence of identity or the officer has reasonable and probable grounds to believe the person will disregard a written promise to appear in court. *Id.* at 782. The Court of Appeals held that because the arrest was illegal, suppression was warranted. *Id.* at 782.

Here, the district court found that Mr. Swain's oral assertion about his name and date of birth did not constitute satisfactory evidence of identity and, therefore, Officer Samson was permitted to arrest him pursuant to the exception in Idaho Code section 49-1407. (R., pp.69-70.) The district court did not address whether suppression would have been warranted if Mr. Swain's oral assertion of his identify had been deemed satisfactory.

Mr. Swain entered a conditional guilty plea to one count of possession of methamphetamine, preserving his right to appeal the district court's order denying his Motion to Suppress. (Tr. 7/21/14, p.1, Ls.18-23.) He filed a timely Notice of Appeal. (R., pp.94-96.)

## ISSUE

Did the district court err when it denied Mr. Swain's Motion to Suppress?

## ARGUMENT

### The District Court Erred When It Denied Mr. Swain's Motion To Suppress

#### A. Introduction

Mindful of the United States Supreme Court decision in *Virginia v. Moore*, 553 U.S. 164 (2008) and the Idaho Supreme Court's decision in *State v. Green*, No. 41736, 2015 WL 3826636 (Idaho June 22, 2015), Mr. Swain nevertheless asserts that the district court erred when it denied his motion to suppress because his arrest violated the provisions of Idaho Code section 49-1407 and, therefore, any evidence discovered as a result of the arrest should be suppressed.

#### B. Standard Of Review

In *State v. Cutler*, 143 Idaho 297 (Ct. App. 2006), the Court of Appeals articulated the following standard of review for an appeal from a motion to suppress:

The standard of review of a suppression motion is bifurcated. When a decision on a motion to suppress is challenged, we accept the trial court's findings of fact which are supported by substantial evidence, but we freely review the application of constitutional principles to the facts as found. At a suppression hearing, the power to assess the credibility of witnesses, resolve factual conflicts, weigh evidence, and draw factual inferences is vested in the trial court.

*Id.* at 302 (citations omitted).

#### C. The District Court Erred When It Denied Mr. Swain's Motion To Suppress

The Fourth Amendment protects "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." U.S. Const. amend. IV. The purpose of this constitutional right is to "impose a standard of reasonableness upon the exercise of discretion by governmental agents and thereby



safeguard an individual's privacy and security against arbitrary invasions.” *State v. Maddox*, 137 Idaho 821, 824 (Ct. App. 2002).

Mr. Swain asserts that Officer Samson was not permitted to arrest him for driving without privileges because he orally identified himself and, therefore, the provision of Idaho Code section 49-1407 that allows an officer to arrest a person for driving without privileges if they do not provide satisfactory evidence of identity did not apply in his case. Idaho Code section 49-1407 states:

Whenever any person is halted by a peace officer for any misdemeanor violation of the provisions of this title and is not required to be taken before a magistrate, the person shall, in the discretion of the officer, either be given a traffic citation or be taken without unnecessary delay before the proper magistrate as specified in section 49-1411, Idaho Code, in the following cases:

- (1) When the person does not furnish satisfactory evidence of identity or when the officer has reasonable and probable grounds to believe the person will disregard a written promise to appear in court.
- (2) When the person is charged with a violation relating to the refusal of a driver of a vehicle to submit a vehicle to an inspection and test.
- (3) When the person is charged with a violation relating to the failure or refusal of a driver of a vehicle to submit the vehicle and load to a weighing or to remove excess weight therefrom.

The district court determined that Mr. Swain was properly arrested pursuant to section 49-1407(1) because he did not have identification. (R., p.70.) Mr. Swain maintains on appeal that his oral statement of identification, combined with the fact that Officer Samson knew him from prior contact was sufficient evidence of identity.

However, the United States Supreme Court has held, “In the context of the Federal Constitution and its interpreting case law, an arrest is ‘lawful’ if ‘officers have probable cause to believe that a person has committed a crime in their presence’ even if such an arrest does not comply with state statutes governing arrests.” *Virginia v.*

*Moore*, 553 U.S. 164, 173-78 (2008). Further, the Idaho Supreme Court addressed similar facts to those here in *State v. Green*, No. 41736, 2015 WL 3826636 (Idaho June 22, 2015) and held that even if an officer arrests a person for driving without privileges in violation of section 49-1407, such a violation of the statute is not a constitutional violation and, therefore, suppression is not appropriate. *Id.* at \*8. The Court in *Green* addressed the issue under both the Federal Constitution and Idaho's Constitution. *Id.* at \*2.

Mr. Swain nevertheless contends that because he was unlawfully arrested pursuant to section 49-1407, the evidence found during the search incident to arrest should be suppressed.

#### CONCLUSION

Mr. Swain respectfully requests that this Court vacate the judgment and commitment, reverse the order denying his Motion to Suppress, and remand the case to the district court for further proceedings.

DATED this 14<sup>th</sup> day of September, 2015.

  
\_\_\_\_\_  
ERIC D. FREDERICKSEN  
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 14<sup>th</sup> day of September, 2015, I served a true and correct copy of the foregoing APPELLANT'S BRIEF, by causing to be placed a copy thereof in the U.S. Mail, addressed to:

TAYLOR SWAIN  
INMATE #112813  
NICI  
236 RADAR ROAD  
COTTONWOOD ID 83522

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DISTRICT COURT JUDGE  
E-MAILED BRIEF

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KES/eas